

**Scharf-Norton Center for Constitutional Litigation at the
GOLDWATER INSTITUTE**

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**IN THE SUPERIOR COURT OF ARIZONA
IN AND FOR THE COUNTY OF PIMA**

RICHARD RODGERS; SHELBY
MAGNUSON-HAWKINS; and DAVID
PRESTON,

Plaintiffs,

vs.

CHARLES H. HUCKELBERRY, in his official
capacity as County Administrator of Pima
County; SHARON BRONSON, RAY
CARROLL, RICHARD ELIAS, ALLYSON
MILLER, and RAMÓN VALADEZ, in their
official capacities as members of the Pima
County Board of Supervisors; PIMA COUNTY,
a political subdivision of the State of Arizona,

Defendants.

Case No.: C20161761

**PLAINTIFFS' REPLY TO
DEFENDANTS' CONTROVERTING
STATEMENT OF FACTS AND
SUPPLEMENTAL STATEMENT OF
FACTS IN SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY
JUDGMENT**

(Assigned to the Honorable
Catherine Woods)

Plaintiffs reply to Defendants' Controverting Statement of Facts and Additional Facts ("CSOF"), and the numbered paragraphs below correspond to the numbered paragraphs in the CSOF.

There are no material fact disputes that would preclude summary judgment for Plaintiffs. Although Defendants have commented on certain facts that Plaintiffs have asserted, or have tried to portray certain facts as disputed or "incomplete," these facts are either not actually disputed, or are not material, or the purported dispute is only a different interpretation by Defendants.

It is worth emphasizing that, to raise a genuine dispute of material fact precluding summary judgment, Defendants must set forth "*specific* facts showing a *genuine* issue for trial," *MacConnell v. Mitten*, 131 Ariz. 22, 25 (1981) (emphasis added). This means they must raise a (1) genuine dispute of (2) fact, not law (or other), and that dispute must be (3) material, which means, significant enough to warrant judicial judgment. *United Bank of Ariz. v. Allyn*, 167 Ariz. 191, 195 (App. 1990). *See also Orme Sch. v. Reeves*, 166 Ariz. 301, 311 (1990) ("some dispute over irrelevant or immaterial facts" is insufficient to deny summary judgment). Defendants may not "rely merely on allegations or denials of its own pleading," Ariz. R. Civ. P. 56(e), or "some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). In other words, it is not sufficient for Defendants to quibble with interpretations or to "rely on conclusory allegations unsupported by factual data to create an issue of material fact," *Hansen v. U.S.*, 7 F.3d 137, 138 (9th Cir. 1993), or to point to the "mere existence of a scintilla of evidence," *Reeves*, 166 Ariz. at 309—all of which Defendants repeatedly do. Once these are laid aside, it is clear that Defendants have raised no dispute of material fact precluding summary judgment for Plaintiffs.

REPLY TO DEFENDANTS' CSOF

1. This is not a factual dispute. The County claims Plaintiffs' statement is "incomplete" because Swaim "had already been chosen by Mike Hammond and was a consultant for World View." But that is irrelevant and not a dispute of fact, because Plaintiffs stated that Huckelberry recommended that World View work with Swaim. The fact that he did so after Hammond recommended Swaim to Huckelberry does not change the fact, and is irrelevant.

2. No dispute.

3. This is not a genuine dispute of fact: The memo speaks for itself, and Plaintiffs accurately quoted its content. Defendants are trying to argue over the meaning of the word “select,” but that is not a dispute of fact, because whether Huckelberry’s choice to obtain services from Swaim beginning in August 2015 qualifies as “selection” or not is a question of law, not of fact. The County has argued that Huckelberry lacked authority to select Swaim—but, again, that is a legal dispute, not a factual dispute—and certainly does not dispute Fact Number 3—and therefore not proper for inclusion in a controverting statement of facts. Nor does it preclude summary judgment for Plaintiffs, because if Huckelberry lacked legal authority to select Swaim, that only substantiates Plaintiffs’ contention that his actions were; *see* Plaintiffs’ Reply Brief at 8 n.4. In any event, the material fact here is that Huckelberry stated in his January 2016 report to the Board that he had “selected Swaim ... as the Lead Architect ... [and] Barker Morrisey” as the contractor, and the County has not disputed that fact. PSOF Ex. 4 at 7.

4. Not a genuine dispute of fact for reasons stated in ¶ 1, above.

5. No dispute.

6. No dispute.

7. No dispute.

8. No dispute.

9. No dispute. The County adds that Moffatt was “making an assumption,” but does not dispute the fact that there are other architects and contractors in the County capable of doing the World View project. Given that the testimony showed that neither Barker nor Swaim had any particular expertise relevant to this project, PSOF ¶¶ 6-7, this Court could, if necessary, take judicial notice of the fact that there are other architects and contractors in Pima County who could have built the project (if they had been given the opportunity to do so).

10. No dispute.

11. No dispute. The County adds that the word “timeframes” appears in the notes, but this is (a) inadmissible hearsay, and (b) irrelevant, since it is not at all clear what “timeframes” refers to.

12. Not a genuine dispute of material fact. The County adds that “it was a ‘collective ask.’” That is irrelevant and does not change the fact. The “collective” in question was the working group organized by the County to put the World View project together; that group that consisted of the County, Swaim, Barker, and World View. PSOF Ex. 6 at 33:5-35:8. The fact that World View representatives *participated* is irrelevant. The “ask” was about designing and building a building that *the County* owns. PSOF ¶ 37.

13. No dispute.

14. Not a genuine dispute of fact. The County is quibbling over the word “held.” Such quibbling does not raise a dispute of material fact. It is true, as the County says, that “[t]hese were team meetings,” but as noted above, ¶ 12, the team consisted of the County, World View, Swaim, and Barker, regarding services that would be provided to the County (the design and construction of a building the County owns) in order to plan the project which the County afterward ratified. These meetings would not have occurred but for the County’s participation. The County sought and received Swaim and Barker’s services at these meetings, received the estimates and plans Swaim and Barker put together, and paid to complete the project that was planned at these meetings. So the County’s effort to dispute that it “held” these meetings is not a factual dispute precluding summary judgment.

15. No dispute.

16. No dispute. The County’s clarification is irrelevant.

17. No dispute.

18. This is not a genuine dispute of material fact. The County seeks to make it appear that there is a dispute by quoting Moffatt out of context. When Moffatt was asked when he became aware of the November 2016 deadline, Moffatt testified “I don’t remember the dates, I’m sorry.” PSOF Ex. 6 at 16:18. When pressed, he said, “[Huckelberry] wasn’t specific...but he said they have a critical project where they need to be done by November of—well, they need to be done, you know, within 15, 18 months of now, of the time we started. That’s why I’m saying mid-2015. So that’s what he said.” *Id.* at 16:24-17:5.

The fact that the November 2016 deadline was not known to the County when it began obtaining Swaim and Huckelberry's services in August 2015 is also substantiated by the following:

- Barker testified that he was informed of the deadline in September. PSOF Ex. 1 at 18:21-23.
- Huckelberry confirmed this, though his memory was vague: "My guess is [the deadline] came up sometime after the initial discussions, which would have occurred in January or August, but it's probably fairly certain that Mike probably—September, October, there was pretty much knowledge that it had to be delivered by November of '16." PSOF Ex. 2 at 75:17-22.
- Swaim testified that nobody referred to the November 2016 deadline at the August 2015 meeting, Swaim depo, attached as Exhibit 1 at 22:25-23:5 (Q: "Do you recall whether anyone at this [August 2015] meeting discussed when World View would need the project completed?" A: "I don't—there were no specific dates as I recall. Time was of an issue, but I do not remember specific dates.")
- Swaim also testified that "[t]here was a requirement that came on *that fall* that there would be *one year* to be able to design and build the building." PSOF Ex. 7 at 38:15-19 (emphasis added).

Thus while the witnesses all had difficulty remembering exactly, they were uniform in their testimony that *the November 2016 deadline was not on the table in August 2015*, and that it was first announced in September or October of 2015.

The reference in Moffatt's notes to "timeframes" is (a) inadmissible hearsay, and (b) so vague as to be misleading and irrelevant. It is not clear what "timeframes" refers to.

Therefore, the County's purported dispute is the kind of "metaphysical doubt as to the material facts," *Matsushita Elec. Indus. Co.*, 475 U.S. at 586, or "mere existence of a scintilla of evidence," *Reeves*, 166 Ariz. at 309, that does not qualify as a material factual dispute.

19. No dispute.

20. No dispute.

21. No dispute.

22. No material dispute. The \$2,000 figure is simply used as an indicator of the amount of free services the County procured from Barker—in violation of A.R.S. § 34-605(B)—but Plaintiffs agree that there is no way to calculate the *actual* value of these services.

23. No dispute.

24. No dispute—although Plaintiffs do object to Defendants’ unsubstantiated assertion as to when World View “likely” made its November 2016 deadline clear, for reasons stated above, ¶ 18. That assertion is based on testimony taken out of context and on an irrelevant, inadmissible hearsay document. The evidence is plain that the November 2016 deadline was not announced until September or October of 2015.

25. No dispute.

26. No dispute of material fact. Plaintiffs agree that Swaim and Barker testified that they were motivated to provide free services to the community.

27. No dispute.

28. No dispute.

29. No dispute.

30. No dispute.

31. No dispute.

32. No dispute.

33. No dispute.

34. No genuine dispute of material fact. Plaintiffs accurately quoted Swaim’s testimony, and the County has provided no factual dispute. Instead, it objects to the use of the term “plans.” This is a semantic quibble that does not rise to the level of a factual dispute. The evidence shows that Swaim’s plans (drawings, specifications, whatever term the County prefers) were “probably 30 percent” finished by January 2016. Moffatt Depo, attached as Ex. 2 at 84:3.

35. Not a dispute of material fact. The document was quoted for purposes of establishing that Huckelberry stated that even if the County had engaged in a competitive process, the County would have selected Swaim and Barker on account of their prior uncompensated work. That is the relevant fact, and the County provides no factual basis for disputing it. It does appear that the document in question is a public statement made in April 2016, instead of the May 2016 report to the Board (many documents the County produced in discovery were out of order), but that is not a material fact.

36. No genuine dispute of fact. Huckelberry testified that if the County had initiated “any competitive process” in January 2016, it would “more than likely” have selected Swaim and Barker on account of their prior uncompensated work. PSOF Ex. 2 at 95:7-20. The County’s reference to the amount of time the Title 34 process takes is not a factual dispute, and is irrelevant.

37. No dispute.

38. No dispute. The County’s “completion” is irrelevant.

39. No factual dispute. The County contends that the Board “made a determination that no amount of competition was practicable,” but that is a *legal* conclusion. As a *factual* matter, all the Board did was to approve Huckelberry’s report/proposal, and Huckelberry testified repeatedly that he made no effort to determine what amount of competition would have been practicable under the circumstances. PSOF Ex. 2 at 89:6-10. The County’s position is that this does not matter, because *as a legal matter*, the Board’s approval of Huckelberry’s report constitutes “a determination,” but that is not a factual dispute—it’s a legal conclusion, and therefore is not a dispute of fact precluding summary judgment for Plaintiffs.

40. No genuine factual dispute. The County claims that Huckelberry “*expressly* proposed a different deadline” in an October 23, 2015 letter to World View, but this is an error. The County is confusing two different things. That letter refers to “*occupancy* of the building in 2017,” not to the deadline for completion of *construction*. The letter makes no reference to the November 2016 *construction* deadline that is the relevant deadline here. It certainly does not “attempt to resist or negotiate about” the *construction* deadline, which is the fact asserted in ¶ 40 of Plaintiffs’ statement of

facts. As for Moffatt, he testified only that “[w]e said it was difficult” to meet the November 2016 deadline, but that was all. PSOF Ex. 6 at 54:23. Plaintiffs do not deny that the County found it “difficult” to meet World View’s deadline—but that’s not the same as seeking to negotiate with World View or change that deadline. The County has therefore provided no factual dispute that would preclude summary judgment for Plaintiffs.

41. No dispute.

**PLAINTIFFS’ SUPPLEMENTAL STATEMENT OF FACTS IN SUPPORT OF
PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT (PSSOF)**

1. Moffatt testified that it would have been difficult in January 2016 for the County to hire a different contractor or architect because “You could not get anybody up to speed in time... [N]umber one, you [would have] had to start again with architects, and if—and even if you had a contractor that could build it that fast, you had to—you had to get an architect to design it.” Ex. 2 at 83:17-84:1.

2. Moffatt testified that Swaim’s plans were “probably 30 percent” complete by January 2016, *Id.* at 84:3.

3. Moffatt testified that because Barker and Swaim had been involved with planning the World View project between August 2015 and January 2016, they were already up to speed in January 2016, and that this gave Barker and Swaim a head start in completing the project. *Id.* at 84:12-15.

4. Barker testified that one reason for involving a contractor early on in a project was because there is “lead time” required to engineer and manufacture the metal for a prefabricated building. Barker Deposition, attached as Exhibit 3 at 81: 11-20.

5. Swaim testified that Swaim and Barker were able to complete the project swiftly thanks in part to the amount of planning that they had done regarding the World View project between August 2015 and January 2016. PSOF Ex. 7 at 59:14-61:4.

6. Barker at one point revised the plans on the facility to scale down the super-flat floor in the construction facility to a flat floor, and modified the bay spacing to reduce the number of columns inside. PSOF Ex. 1 at 36:22-39:20.

7. Barker estimated that the “chip seal on AB” would cost \$277,115. PSOF Ex. 10.

DATED: July 3, 2018

Respectfully submitted,

/s/ Timothy Sandefur
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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

RICHARD RODGERS; SHELBY)	
MAGNUSON-HAWKINS; and DAVID)	
PRESTON,)	
)	
Plaintiffs,)	
)	
v.)	No. C20161761
)	
CHARLES H. HUCKELBERRY, in his)	
official capacity as County)	
Administrator of Pima County;)	
SHARON BRONSON, RAY CARROLL,)	
RICHARD ELIAS, ALLYSON MILLER,)	
and RAMON VALADEZ, in their)	
official capacities as members)	
of the Pima County Board of)	
Supervisors; PIMA COUNTY, a)	
political subdivision of the)	
State of Arizona,)	
)	
Defendants.)	
_____)	

DEPOSITION OF PHIL SWAIM

Tucson, Arizona
April 9, 2018
12:59 p.m.

REPORTED BY:
Thomas A. Woppert, RPR
AZ CCR No. 50476

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<p style="text-align: right;">Page 20</p> <p>1 (Deposition Exhibit 2 marked for identification)</p> <p>2 BY MR. SANDEFUR:</p> <p>3 Q. These are some handwritten notes, and you see</p> <p>4 they're dated August 20th, 2015. Have you seen these</p> <p>5 before?</p> <p>6 A. No.</p> <p>7 Q. These seem to be memorializing a meeting. And</p> <p>8 it has your name on there. It says Phil, Jason, Swaim &</p> <p>9 Associates, and then it also says Brian Barker, Kevin</p> <p>10 Morrissey. Did you attend a meeting relating to the World</p> <p>11 View project on August 20th, 2015?</p> <p>12 A. I would assume we met -- we did meet in August.</p> <p>13 I assume that may have been the date.</p> <p>14 Q. And, to the best of your memory, was this the</p> <p>15 first in-person meeting on the subject?</p> <p>16 A. I don't know if it was or not. I would --</p> <p>17 Q. Do you know whether there were any earlier</p> <p>18 meetings?</p> <p>19 A. I'm not sure of the date of our first meeting.</p> <p>20 I assume --</p> <p>21 Q. Do you remember who --</p> <p>22 A. I assume others had met prior to the time that</p> <p>23 I had joined the team.</p> <p>24 Q. Do you remember who invited you to this</p> <p>25 meeting?</p>	<p style="text-align: right;">Page 22</p> <p>1 Q. Do you remember any meeting between</p> <p>2 August 20th, 2015, and January of 2016 when any architect</p> <p>3 other than yourself and your firm was involved in any of</p> <p>4 these meetings?</p> <p>5 A. I'm not aware of any others.</p> <p>6 Q. And do you know of any time during that period</p> <p>7 when any contractor other than Swaim was involved in these</p> <p>8 meetings?</p> <p>9 A. Architect other than Swaim?</p> <p>10 Q. I'm sorry. Any contractor other than Baker</p> <p>11 Morrissey was involved.</p> <p>12 A. No, I am not aware of others. There were</p> <p>13 subcontractors that were assisting them.</p> <p>14 Q. And it says here 100 by 600 balloon</p> <p>15 manufacturing, 24-foot clearance and so forth. Do you</p> <p>16 know what that wording there refers to?</p> <p>17 A. That was talking about the -- the building</p> <p>18 requirements or needs by World View.</p> <p>19 Q. And was that information that you then were</p> <p>20 going to take and come up with a plan for what this</p> <p>21 building would look like?</p> <p>22 A. Yes. I would say could look like, not would</p> <p>23 look like.</p> <p>24 Q. Sure.</p> <p>25 Do you recall whether anyone at this meeting</p>
<p style="text-align: right;">Page 21</p> <p>1 A. Mike Hammond.</p> <p>2 Q. And were there any representatives from any</p> <p>3 other architecture firms present at this meeting?</p> <p>4 A. No.</p> <p>5 Q. Were there any representatives from any</p> <p>6 contracting firms other than Barker Morrissey present at</p> <p>7 this meeting?</p> <p>8 A. No.</p> <p>9 Q. Do you know why they were invited to this</p> <p>10 meeting?</p> <p>11 A. They wanted their assistance with cost</p> <p>12 estimating.</p> <p>13 Q. When you say they wanted their assistance, you</p> <p>14 mean that the county or World View wanted their</p> <p>15 assistance?</p> <p>16 A. There was a team of people there from the</p> <p>17 Arizona Commerce Authority, Mike Hammond, Sun Cor. I</p> <p>18 mean, there were a variety of people involved in this</p> <p>19 process at this point.</p> <p>20 Q. Okay. Do you know why no other architects were</p> <p>21 invited?</p> <p>22 A. I do not.</p> <p>23 Q. Do you know why no other contractors were</p> <p>24 invited?</p> <p>25 A. I do not.</p>	<p style="text-align: right;">Page 23</p> <p>1 discussed when World View would need the project</p> <p>2 completed?</p> <p>3 A. I don't -- there were no specific dates as I</p> <p>4 recall. Time was of an issue, but I do not remember</p> <p>5 specific dates.</p> <p>6 Q. And I think I maybe might have asked you this</p> <p>7 already, but do you remember when you first learned of</p> <p>8 World View's deadline?</p> <p>9 A. I don't recall specifically. Again, time was</p> <p>10 always of the issue, but -- compared to what the other</p> <p>11 competitors were doing, but I don't remember specific</p> <p>12 dates.</p> <p>13 Q. When you did hear the deadline, do you remember</p> <p>14 at any time pushing back against that and saying, you</p> <p>15 know, that's an unrealistic deadline or that would be too</p> <p>16 difficult to do or anything like that?</p> <p>17 A. No. It was about trying to figure out how</p> <p>18 could you possibly get something like that done, was</p> <p>19 really the approach.</p> <p>20 Q. Let's look at this document here.</p> <p>21 (Deposition Exhibit 3 marked for identification)</p> <p>22 BY MR. SANDEFUR:</p> <p>23 Q. This document is dated August 25th, 2015. Have</p> <p>24 you seen this before?</p> <p>25 A. It looks familiar, yes.</p>

IN THE SUPERIOR COURT OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

RICHARD RODGERS; SHELBY)
MAGNUSON-HAWKINS; and)
DAVID PRESTON,)
)
 Plaintiffs,)
)
 vs.) No. C20161761
)
CHARLES H. HUCKELBERRY, in)
his official capacity as)
County Administrator of)
Pima County; SHARON)
BRONSON, RAY CARROLL,)
RICHARD ELIAS, ALYSON)
MILLER, and RAMON VALADEZ,)
in their official)
capacities as members of)
the Pima County Board of)
Supervisors; PIMA COUNTY,)
a political subdivision of)
the State of Arizona,)
)
 Defendants.)

)

DEPOSITION OF JOHN MOFFATT, PH.D.

March 19, 2018
Tucson, Arizona
8:13 a.m.

Reported by:
Julianne Roesly, RPR, CR, CSR
CR #50302 (AZ), CSR #7756 (CA)

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<p style="text-align: right;">Page 80</p> <p>1 A. -- who asked what their involvement had been to</p> <p>2 date.</p> <p>3 Q. And you presumably reported back to Tom what</p> <p>4 that involvement had been?</p> <p>5 A. Right, that they had been engaged in a number</p> <p>6 of these meetings and that -- that we did have what we</p> <p>7 felt to be a good design and plan to -- to meet the</p> <p>8 deadline that was required.</p> <p>9 Q. And then beyond that, did you have any</p> <p>10 involvement with that inquiry?</p> <p>11 A. No.</p> <p>12 Q. Is it conceivable that Mr. Burke worked with</p> <p>13 the procurement director and the County administrator on</p> <p>14 that procurement process from there forward to January</p> <p>15 2016?</p> <p>16 A. Yes.</p> <p>17 Q. Without you being involved in that?</p> <p>18 A. Yes.</p> <p>19 Q. And at least in your current position, is it</p> <p>20 unusual for you not to be involved in the procurement</p> <p>21 process, even when it's related to your economic</p> <p>22 development duties?</p> <p>23 A. I think you asked a double negative, is it</p> <p>24 unusual not.</p> <p>25 Q. Let me try it again. I'll try to ask it so</p>	<p style="text-align: right;">Page 82</p> <p>1 are about.</p> <p>2 Q. Okay. So those discussions are ongoing at this</p> <p>3 time?</p> <p>4 A. Correct.</p> <p>5 Q. Item two, it's the third line down in your</p> <p>6 notes, appears to me to say, "Go to FLA to lock down</p> <p>7 deal." What does that mean?</p> <p>8 A. That was a comment made by the World View</p> <p>9 people that -- that they were going down there to get</p> <p>10 their final deal identified with us bas- -- Florida, and</p> <p>11 then at that same meeting, we also learned that they</p> <p>12 were going to Jacksonville, so they had two options in</p> <p>13 Florida.</p> <p>14 Q. What did you understand it to mean when they</p> <p>15 said they were going to lock down their deal?</p> <p>16 A. Their goal, just like they were trying to work</p> <p>17 with us to find out the cost and what the final deal</p> <p>18 was. They were going, in my opinion, there to identify</p> <p>19 exactly what the deal that Florida was going to offer.</p> <p>20 Q. So that they can make a decision about which</p> <p>21 deal, given whatever factors they're considering, is the</p> <p>22 one that they want to take?</p> <p>23 A. Yes. If you're going to buy a car, you figure</p> <p>24 out what the alternative is going to cost and what you</p> <p>25 want to do.</p>
<p style="text-align: right;">Page 81</p> <p>1 that it's understandable.</p> <p>2 Is it -- is it common for you to be</p> <p>3 significantly involved in the procurement process for an</p> <p>4 economic development project?</p> <p>5 A. No.</p> <p>6 Q. That was a better question.</p> <p>7 Do you know, as you sit here today, whether the</p> <p>8 County requires any specific form documentation for</p> <p>9 procurements under A.R.S. 34-606 --</p> <p>10 A. I'm not familiar with the specific</p> <p>11 requirements.</p> <p>12 Q. Exhibit, I think it's 11, is a page of</p> <p>13 handwritten notes dated September 3rd, 2015. And this</p> <p>14 is during, as I understand it, and correct me if I'm</p> <p>15 wrong, the period in which the County is heavily</p> <p>16 involved in negotiations with World View and also</p> <p>17 talking -- and also involved in those negotiations with</p> <p>18 Swain and Barker Morrissey; is that right?</p> <p>19 A. That's correct.</p> <p>20 Q. And under Item 2 --</p> <p>21 A. Can I correct "negotiations"?</p> <p>22 Q. Sure.</p> <p>23 A. We were in discussions with them about the</p> <p>24 content and the size of the building and that sort of</p> <p>25 thing. That's -- that's the gist of what these notes</p>	<p style="text-align: right;">Page 83</p> <p>1 Q. And so was it your understanding at this time,</p> <p>2 September 2015, that World View was in the process of</p> <p>3 negotiating with other jurisdictions or discussions with</p> <p>4 other jurisdictions?</p> <p>5 A. Yes. We knew they were seriously in</p> <p>6 discussions.</p> <p>7 MR. FLAGG: That's all I have.</p> <p>8 MR. SANDEFUR: I do actually have one final</p> <p>9 question.</p> <p>10 FURTHER EXAMINATION</p> <p>11 BY MR. SANDEFUR:</p> <p>12 Q. So in January 2016, the County -- I mean, we</p> <p>13 saw that memo, the Board approves the thing, and it --</p> <p>14 the project had to be done by November 2016; is that</p> <p>15 right?</p> <p>16 A. Right.</p> <p>17 Q. Why wasn't it possible to hire a -- another</p> <p>18 contractor or another architect to build that project in</p> <p>19 that amount of time?</p> <p>20 MR. FLAGG: Foundation.</p> <p>21 THE WITNESS: In my opinion, because of the</p> <p>22 time. You could not get anybody up to speed in time,</p> <p>23 you know -- number one, you had to start again with</p> <p>24 architects, and if -- and even if you had a contractor</p> <p>25 that could build it that fast, you had to -- you had to</p>

1 get an architect to design it. And this -- and these
2 were not final designs, either. These were preliminary
3 designs, probably 30 percent max, 30 percent being a
4 term of how far architectural plans go. And so you
5 would have to finish the design, but they would have to
6 get all the basics.

7 And so it was very clear that -- and that was
8 why I -- you know, I -- I call people to do sanity
9 checks, I call them. And, you know, Sundt said they
10 couldn't even build a building in that time, let alone
11 design it, and so that -- that was our --

12 **Q. Because Barker Morrissey and Swaim had been**
13 **involved from an early date, they were up to speed**
14 **already?**

15 A. Clearly.

16 MR. SANDEFUR: Well, I think that's all the
17 questions --

18 MR. FLAGG: Tim, can I just follow up on what
19 you just asked?

20 MR. SANDEFUR: Sure.

21 FURTHER EXAMINATION

22 BY MR. FLAGG:

23 **Q. In your experience, if you know, how much time,**
24 **approximately, does the -- just the procurement process**
25 **itself add to that whole time frame of moving into**

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

RICHARD RODGERS; SHELBY)	
MAGNUSON-HAWKINS; and DAVID)	
PRESTON,)	
)	
Plaintiffs,)	
)	
v.)	No. C20161761
)	
CHARLES H. HUCKELBERRY, in his)	
official capacity as County)	
Administrator of Pima County;)	
SHARON BRONSON, RAY CARROLL,)	
RICHARD ELIAS, ALLYSON MILLER,)	
and RAMON VALADEZ, in their)	
official capacities as members)	
of the Pima County Board of)	
Supervisors; PIMA COUNTY, a)	
political subdivision of the)	
State of Arizona,)	
)	
Defendants.)	
_____)	

DEPOSITION OF BRIAN BARKER

Tucson, Arizona
April 2, 2018
8:50 a.m.

REPORTED BY:
Thomas A. Woppert, RPR
AZ CCR No. 50476

KATHY FINK & ASSOCIATES
2819 East 22nd Street
Tucson, Arizona 85713
(520)624-8644

<p style="text-align: right;">Page 80</p> <p>1 here today whether the project was -- came in on budget, 2 under budget, over budget? 3 A. Under budget. 4 Q. Under budget? Okay. 5 Earlier on you -- I think you were very 6 specific when you described what you meant by the term bid 7 versus an estimate. What in your mind is a bid? 8 A. As you mentioned earlier, design/bid/build, 9 it's with full documents and you're competing with another 10 contractor based on those full design documents. 11 Q. And are you competing based on price or based 12 on some other factor? 13 A. It could be one or both. 14 Q. It just depends on the project? 15 A. Yes. 16 Q. You talked about three other projects that 17 you'd done, I think EuroFresh, Texas Instruments and 18 another one that I don't remember, and I think you said 19 one or more of those were metal buildings. Is that right? 20 A. Correct. Two of them were. 21 Q. Okay. 22 A. Multiple metal buildings at EuroFresh and one 23 at the recycling facility. 24 Q. And is the World View building also a metal 25 building?</p>	<p style="text-align: right;">Page 82</p> <p>1 a two-week review or so, and then the metal building would 2 be -- it was eight to 12 weeks is my recollection. 3 Q. So that process started right away after the 4 board of supervisor's award? 5 A. Yes. 6 Q. And at that time is there also other design and 7 pre-construction work going on with respect to other 8 facets of the project? 9 A. Yes. 10 Q. There's also a launch pad associated with this 11 project? 12 A. Yes. 13 Q. And what does the launch pad -- what does the 14 launch pad consist of to your understanding? 15 A. You mean what is it built -- 16 Q. Yes. 17 A. Concrete is the primary ingredient. There 18 wasn't much else. 19 Q. Basically just a big concrete slab? 20 A. Yes. 21 Q. In terms of the complexity of this project, how 22 would you compare the launch pad with the actual building 23 itself? Was the launch pad a complicated aspect of the 24 project construction-wise? 25 A. I -- I don't know -- the complication in the</p>
<p style="text-align: right;">Page 81</p> <p>1 A. Yes. 2 Q. So at the time that you're involved in 3 discussions with Pima County and with Swaim, did your 4 company have experience building metal buildings? 5 A. Yes. 6 Q. Okay. And is that a prefabricated structure? 7 How does that work? 8 A. That's a pre-engineered metal structure that 9 is -- the components are prefabricated and assembled at 10 the site. 11 Q. Okay. So when you're doing a pre-engineered 12 metal structure, is there lead time that's required to get 13 the metal engineered and fabricated before it comes out to 14 the site? 15 A. Yes. 16 Q. So is that one of the reasons to involve a 17 contractor like Barker Morrissey in a project like this 18 earlier on versus some more standard design/bid/build 19 method? 20 A. Yes, absolutely. 21 Q. And do you know how long or about how long the 22 lead time would be for a project like this? 23 A. So it was -- my recollection is it was six 24 weeks prior -- or I should say six weeks after award to 25 get the shop drawings, and then the shop drawings would be</p>	<p style="text-align: right;">Page 83</p> <p>1 launch pad was the schedule. It was not the launch pad 2 itself, it -- it was primarily the schedule, but the 3 building was, generally speaking, much more complicated 4 than the launch pad. 5 Q. Mr. Sandefur asked you about SBE or small 6 business enterprise oversight. In your experience, when 7 you're working with Pima County, does Pima County also do 8 SBE oversight as part of that? 9 A. Yes. 10 Q. Okay. I want to ask you about just a couple of 11 the exhibits just to clarify, so if you have the stack 12 there, Exhibit 2 was an e-mail chain. It starts out with 13 Pima County 4416 at the bottom right. 14 MR. KRAUJA: 4416. 15 BY MR. FLAGG: 16 Q. So at the very bottom of that page, 17 Mr. Sandefur asked you about the cost comparisons referred 18 to in the e-mail from Phil Swaim to Alex Rodriguez. Do 19 you see that? 20 A. Yes. 21 Q. And then the next page has a highlighted 22 section on it. And it says -- it starts off with, I'm 23 compiling the material to send to John Halikowski at ADOT, 24 et cetera. Do you see that? 25 A. Yes.</p>